

# House Daily Reader

**Friday, February 17, 2006**

Bills Included				
HB 1072	HB 1149	SB 50	SB 57	SB 69
SB 83	SB 89	SB 130	SB 138	SB 142
SB 165	SB 166	SB 180	SB 184	SB 200

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

805M0197

## SENATE ENGROSSED NO. **HB 1072** - 02/15/2006

Introduced by: Representatives Kraus, Frost, Hunhoff, Michels, and Van Etten and Senators Hansen (Tom), Bartling, Dempster, Olson (Ed), and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to direct the Department of Social Services to establish the  
2 South Dakota long-term care partnership program.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. When determining eligibility for nursing and rehabilitative services, if the  
5 individual is a beneficiary of an approved long-term care partnership program policy and has  
6 exhausted the benefits of the policy, the total countable assets of the individual shall be reduced  
7 by one dollar for each one dollar of benefits paid out under the individual's approved long-term  
8 care partnership program policy. The Department of Social Services is authorized to seek any  
9 federal waivers to implement this policy.

10 Section 2. The Department of Social Services shall establish the South Dakota long-term  
11 care partnership program. The program shall include the following components:

- 12 (1) Incentives for an individual to obtain insurance to cover the costs of long-term care;  
13 (2) Standards for long-term care insurance policies for designation as approved  
14 long-term care partnership program policies. The Division of Insurance shall assist  
15 in ensuring that these standards are appropriate. Any insurer offering any long-term



1 care partnership program policy shall file the policy and any advertisements with the  
2 Division of Insurance in accordance with the applicable requirements of Title 58 and  
3 subject to the standards set by the Department of Social Services;

4 (3) A mechanism to qualify for coverage of the costs of long-term care needs under  
5 medicaid without first being required to substantially exhaust his or her resources,  
6 including a reduction of the individual's asset valuation by one dollar for each one  
7 dollar of benefits paid out under the individual's approved long-term care partnership  
8 program policy as a determination of medicaid eligibility;

9 (4) Inflation protection as provided by federal law;

10 (5) Asset protection up to the maximum as provided by federal law;

11 (6) Distribution of information regarding long-term care partnership plan policies to  
12 individuals through insurance companies offering approved partnership policies. The  
13 department shall approve the information before its distribution; and

14 (7) Encouraging the pursuit of private initiatives to alleviate the financial burden on the  
15 state's medical assistance program.

16 Section 3. The Department of Social Services shall make a report regarding the South  
17 Dakota long-term care partnership program as described in section 2 of this Act to the  
18 Legislature during the Eighty-second Legislative Session.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

295M0441

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1149** - 02/13/2006

Introduced by: Representatives O'Brien, Cutler, Faehn, Garnos, Gillespie, Haley, Hargens, Haverly, Hennies, Hunhoff, Jensen, Murschel, Nelson, Rausch, Rave, Roberts, Rounds, and Tidemann and Senators Bogue, Abdallah, Dempster, Duenwald, Hansen (Tom), Knudson, Moore, Olson (Ed), and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to revise certain felony and misdemeanor provisions not  
2 located in the criminal code.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 1-1-11 be repealed.

5 ~~—1-1-11. No armed body of police or detectives, or armed body of persons other than United~~  
6 ~~States troops, shall be brought into this state for the suppression of violence, except upon the~~  
7 ~~application of the Legislature if in session, or the Governor, if the Legislature is not in session.~~  
8 ~~A violation of this section is a Class 6 felony.~~

9 Section 2. That § 2-4-6 be amended to read as follows:

10 2-4-6. Every person who intentionally ~~and~~<sub>1</sub> by force or fraud<sub>1</sub> prevents the Legislature of this  
11 state or either of the branches composing it, or any of the members thereof, from meeting or  
12 organizing, is guilty of a Class 4 felony.

13 Section 3. That § 2-4-8 be amended to read as follows:

14 2-4-8. Every person who intentionally ~~and~~<sub>1</sub> by force or fraud<sub>1</sub> compels or attempts to compel



1 the Legislature of this state, or either of the branches composing it, to adjourn or disperse, is  
2 guilty of a Class 4 felony.

3 Section 4. That § 2-4-10 be amended to read as follows:

4 2-4-10. Every person who intentionally, by force or fraud, compels or attempts to compel  
5 either branch of the Legislature of this state to pass, amend, or reject any bill or resolution, or  
6 to grant or refuse any petition, or to perform or omit to perform any other official act, is guilty  
7 of a Class 4 felony.

8 Section 5. That § 2-7-21 be amended to read as follows:

9 2-7-21. Any person who fraudulently alters a bill which has been passed by the Legislature  
10 of this state, with intent to have it approved by the Governor, certified by the secretary of state,  
11 or printed or published by the printer of the statutes, in language different from that in which  
12 it was passed by the Legislature, is guilty of a Class 6 felony.

13 Section 6. That § 23A-28B-35 be amended to read as follows:

14 23A-28B-35. No person may submit a fraudulent application or claim for a victims'  
15 compensation award, may intentionally make or cause to be made any false statement or  
16 representation of a material fact in a claim, or may intentionally conceal or fail to disclose  
17 information affecting the amount of or the initial or continued right to any such claim or award  
18 when reasonably requested to provide such information by the department or the commission.

19 Any person who violates the provisions of this section is guilty of a Class 1 misdemeanor  
20 if the application or claim is in an amount of ~~five hundred~~ one thousand dollars or less. Any  
21 person who violates the provisions of this section is guilty of a Class 4 felony if the application  
22 or claim is in an amount exceeding ~~five hundred~~ one thousand dollars.

23 Any person who violates the provisions of this section forfeits any benefit received under  
24 this chapter and shall reimburse the state for any such payments received or paid to or on behalf

1 of that person.

2 The state has a civil cause of action for relief against any person who violates this section  
3 in the amount of damages which the state has sustained as a result of such violation and, in  
4 addition, for punitive damages in an amount not more than double the amount of damages  
5 which the state has sustained, together with interest, plus the cost of such suit.

6 Section 7. That § 23A-43-31 be amended to read as follows:

7 23A-43-31. Any person who, having been released pursuant to this chapter, fails to appear  
8 before any court or judicial officer as required or fails to comply with the provisions of § 23A-  
9 43-4.2 shall, subject to the provisions of this title, forfeit any security which was given or  
10 pledged for such person's release and, in addition, shall:

11 (1) If such person was released in connection with a charge of a felony, an alleged felony  
12 violation of § 32-23-1, or ~~while awaiting sentence or pending appeal or certiorari~~  
13 ~~after conviction of any offense~~ fails to report for a jail or penitentiary sentence for  
14 any offense, be guilty of a Class 6 felony;

15 (2) If such person was released in connection with a charge of a misdemeanor, be guilty  
16 of a Class 1 misdemeanor; or

17 (3) If such person was released for appearance as a material witness, be guilty of a Class  
18 1 misdemeanor.

19 Section 8. That § 24-11-48 be amended to read as follows:

20 24-11-48. No employee or other person may deliver or procure to be delivered, or have in  
21 such person's possession with intent to deliver, to any person incarcerated in a jail or a juvenile  
22 detention facility, or deposit or conceal in or around any jail or in or around a juvenile detention  
23 facility, or in any mode of transport entering the grounds of any jail or juvenile detention facility  
24 and its ancillary facilities used to house inmates or juveniles, any article or thing ~~contrary~~

1 prohibited pursuant to § 24-11-47 with intent that any inmate obtain or receive the same. A  
2 violation of this section is a Class 6 felony.

3 Section 9. The code counsel shall transfer § 25-5A-7.1 to a newly created chapter in Title  
4 22 entitled "Offenses Against the Family" and shall renumber the section accordingly and adjust  
5 all appropriate cross references.

6 Section 10. That § 25-7-15 be amended to read as follows:

7 25-7-15. The parent of any child under the age of ~~six~~ ten years and any person to whom any  
8 such child has been confided for nurture or education who deserts such child in any place  
9 ~~whatever~~ with intent to wholly ~~to~~ abandon it the child, is guilty of a ~~Class 6~~ Class 4 felony.

10 Section 11. That § 25-10-13 be amended to read as follows:

11 25-10-13. If a temporary protection order or a protection order is granted pursuant to this  
12 chapter or is a foreign protection order pursuant to § 25-10-12.1, and the respondent or person  
13 to be restrained knows of the order, violation of the order is a Class 1 misdemeanor. If any  
14 violation of this section constitutes an assault pursuant to ~~§ 22-18-1.1~~ § 22-18-1, the violation  
15 is a Class 6 felony. If a respondent or person to be restrained has been convicted of, or entered  
16 a plea of guilty to, two or more violations of this section, the factual basis for which occurred  
17 after the date of the second conviction, and occurred within five years of committing the current  
18 offense, the respondent or person to be restrained is guilty of a Class 6 felony for any third or  
19 subsequent offense. Any proceeding under this chapter is in addition to other civil or criminal  
20 remedies.

21 Section 12. That § 31-28-23 be amended to read as follows:

22 31-28-23. No person may, without lawful authority, attempt or actually alter, deface, injure,  
23 knock down, remove, or in any manner molest or interfere with any official highway marker,  
24 sign, guide board, traffic-control device, interstate highway gate, or any railroad sign or signal,

1 barrier, warning device, or sign erected in connection with highway maintenance or construction  
2 activities. A violation of this section is a Class 1 misdemeanor. Any person who violates this  
3 section is responsible for the cost of repairing or replacing such markers, signs, signals, barriers,  
4 or devices.

5 Section 13. That § 33-12-23 be amended to read as follows:

6 33-12-23. ~~Every~~ Any person who enters any fort, magazine, arsenal, armory, arsenal yard,  
7 or encampment, and seizes or takes away any arms, ammunition, military stores, or supplies  
8 belonging to the people of this state, and every person who enters any such place with intent to  
9 do so, is guilty of a ~~Class 4~~ Class 2 felony.

10 Section 14. That § 34-16-2 be amended to read as follows:

11 34-16-2. ~~Every~~ Any person who releases or spreads any disease germs intending thereby to  
12 accomplish the infection of one or more persons or domestic animals is guilty of a ~~Class 4~~ Class  
13 2 felony.

14 Section 15. That § 37-17-1 be amended to read as follows:

15 37-17-1. Any person who knowingly sells or offers for sale any agricultural implement, farm  
16 tractor, or other type of farm machinery or equipment, or radio, piano, phonograph, sewing  
17 machine, washing machine, typewriter, adding machine, comptometer, bicycle, firearm, safe,  
18 vacuum cleaner, dictating machine, tape recorder, watch, watch movement, watch case, or any  
19 mechanical or electrical device, appliance, contrivance, material, piece of apparatus, or  
20 equipment, which is identified by a serial number placed thereon by the manufacturer, the  
21 original serial number of which has been destroyed, removed, altered, covered, or defaced, is  
22 guilty of a Class 2 misdemeanor if the value of the property is ~~two~~ four hundred dollars or less.  
23 If the value of the property is more than ~~two~~ four hundred dollars and less than one thousand  
24 dollars, such person is guilty of a Class 1 misdemeanor. If the value of the property is one

1 thousand dollars or greater, such person is guilty of a Class 4 felony.

2 Section 16. That § 40-38-4 be amended to read as follows:

3 40-38-4. Any person who violates subdivision 40-38-2(1) or (6) is guilty of a ~~Class 6 felony~~  
4 Class 2 misdemeanor if there is damage of ~~at least five~~ four hundred dollars ~~and a Class 4~~  
5 ~~misdemeanor~~ or less. Any person who violates subdivision 40-38-2(1) or (6) is guilty of a Class  
6 1 misdemeanor if there is damage of an amount greater than four hundred dollars and less than  
7 one thousand dollars. Any person who violates subdivision 40-38-2(1) or (6) is guilty of a Class  
8 4 felony if there is damage of ~~less than five hundred dollars~~ one thousand dollars or greater. Any  
9 person who violates subdivisions 40-38-2(2) to (5), inclusive, is guilty of a ~~Class 6~~ Class 4  
10 felony.

11 Section 17. That § 47-31B-508 be amended to read as follows:

12 47-31B-508. (a) Criminal penalties. It is a ~~class four~~ Class 4 felony for any person that  
13 willfully violates this chapter, or a rule adopted or order issued under this chapter, except § 47-  
14 31B-504 or the notice filing requirements of § 47-31B-302 or 47-31B-405, or that willfully  
15 violates § 47-31B-505 knowing the statement made to be false or misleading in a material  
16 respect; ~~upon conviction, shall be fined not more than ten thousand dollars per violation~~. An  
17 individual convicted of violating a rule or order under this chapter may be fined, but may not  
18 be imprisoned, if the individual did not have knowledge of the rule or order. A subsequent  
19 violation is a Class 3 felony.

20 (b) Criminal reference not required. The Attorney General or the proper prosecuting attorney  
21 with or without a reference from the director, may institute criminal proceedings under this  
22 chapter.

23 (c) No limitation on other criminal enforcement. This chapter does not limit the power of  
24 this state to punish a person for conduct that constitutes a crime under other laws of this state.

Section 18. That § 51A-1-10 be amended to read as follows:

51A-1-10. It is a Class 4 felony for an officer, director, employee, or agent of a bank:

- (1) With intent to deceive, to make any false or misleading statement or entry or omit any statement or entry that should be in any book, account, report, or statement of the bank; or
- (2) To obstruct or endeavor to obstruct a lawful examination of the bank by an officer or employee of the division.

Section 19. That § 52-1-12 be amended to read as follows:

52-1-12. It is a Class 4 felony for an officer, director, employee or agent of an association:

- (1) With intent to deceive, to make a false or misleading statement or entry or to omit any statement or entry that should be made in a book, account report or statement of the association; or
- (2) To obstruct a lawful examination of the association by an officer or employee of the Division of Banking.

Section 20. That § 58-4A-2 be amended to read as follows:

58-4A-2. For purposes of this chapter, a person commits a fraudulent insurance act if the person:

- (1) Knowingly and with intent to defraud or deceive issues or possesses fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;
- (2) Is engaged in the business of insurance, whether authorized or unauthorized, receives money for the purpose of purchasing insurance and converts the money to the person's own benefit or for a purpose not intended or authorized by an insured or prospective insured;

- 1       (3)   Willfully embezzles, abstracts, steals, misappropriates, or converts money, funds,  
2           premiums, credits, or other property of an insurer or person engaged in the business  
3           of insurance or of an insured or prospective insured;
- 4       (4)   Knowingly and with intent to defraud or deceive makes any false entry of a material  
5           fact in or pertaining to any document or statement filed with or required by the  
6           Division of Insurance;
- 7       (5)   Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts,  
8           or destroys assets or records of an insurer or other person engaged in the business of  
9           insurance or attempts to remove, conceal, alter, divert, or destroy assets or records  
10          of an insurer or other person engaged in the business of insurance;
- 11      (6)   Knowingly and with intent to defraud or deceive presents, causes to be presented, or  
12          prepares with knowledge or belief that it will be presented to or by an insurer, or any  
13          insurance producer of an insurer, any statement as part of a claim, in support of a  
14          claim, or in denial of a claim for payment or other benefit pursuant to an insurance  
15          policy knowing that the statement contains any false, incomplete, or misleading  
16          information concerning any fact or thing material to a claim;
- 17      (7)   Assists, abets, solicits, or conspires with another to prepare or make any statement  
18          that is intended to be presented to or by an insurer or person in connection with or in  
19          support of any claim for payment or other benefit, or denial, pursuant to an insurance  
20          policy knowing that the statement contains any false, incomplete, or misleading  
21          information concerning any fact or thing material to the claim; or
- 22      (8)   Makes any false or fraudulent representations as to the death or disability of a policy  
23          or certificate holder in any statement or certificate for the purpose of fraudulently  
24          obtaining money or benefit from an insurer.

1 Any violation of this section for an amount of ~~five~~ four hundred dollars or less is a ~~Class 1~~  
2 Class 2 misdemeanor. Any violation of this section for an amount in excess of ~~five~~ four hundred  
3 dollars and less than one thousand dollars is a Class 1 misdemeanor. Any violation of this  
4 section for an amount of one thousand dollars and greater is a Class 4 felony. Any other  
5 violation of this section is a Class 1 misdemeanor.

6 Section 21. That § 58-33-37 be amended to read as follows:

7 58-33-37. Any person who knowingly makes any false or fraudulent statement or  
8 representation with reference to any application for insurance is guilty of a Class 1  
9 misdemeanor. Any person who knowingly presents or causes to be presented a false or  
10 fraudulent claim for the purpose of obtaining any money or benefit, or who submits any proof  
11 in support of such a claim for the payment of a loss upon a contract of insurance, or who  
12 prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of  
13 loss, or other document or writing, with intent that the same may be presented or used in support  
14 of such a claim, is guilty of a ~~Class 1~~ Class 2 misdemeanor if such claim is for an amount of ~~five~~  
15 four hundred dollars or less; a Class 1 misdemeanor if such claims is for an amount greater than  
16 four hundred dollars and less than one thousand dollars; and ~~is guilty of~~ a Class 4 felony if such  
17 claim ~~exceeds five hundred~~ is one thousand dollars or greater.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

400M0261

HOUSE TAXATION COMMITTEE ENGROSSED NO.

**SB 50** - 02/14/2006

**This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: The Committee on Judiciary at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to make certain persons responsible for making tax returns  
2 and payment of tax debts.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-33A-17 be amended to read as follows:

5 10-33A-17. Any person who:

6 (1) Makes any false or fraudulent return in attempting to defeat or evade the  
7 telecommunications gross receipts tax is guilty of a Class 6 felony;

8 (2) Fails to pay the telecommunications gross receipts tax due under this chapter within  
9 sixty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;

10 (3) Fails to keep the records required by this chapter or refuses to exhibit these records  
11 to the department for the purpose of examination is guilty of a Class 1 misdemeanor;

12 (4) Fails to file a return required by this chapter within sixty days from the date the return  
13 is due is guilty of a Class 1 misdemeanor;

14 (5) Engages in business as a telecommunications company under this chapter without



obtaining a telecommunications gross receipts tax license is guilty of a Class 1 misdemeanor;

(6) Engages in business as a telecommunications company under this chapter after the company's telecommunications gross receipts tax license has been revoked or canceled by the secretary is guilty of a Class 6 felony;

(7) Willfully violates any rule of the secretary for the administration and enforcement of the provisions of this chapter is guilty of a Class 1 misdemeanor;

(8) Violates either subdivision (2) or subdivision (4) of this section two or more times in any twelve-month period is guilty of a Class 6 felony; or

(9) Engages in business as a telecommunications company under this chapter without obtaining a telecommunications gross receipts tax license after having been notified in writing by the secretary that the telecommunications company is subject to the provisions of this chapter is guilty of a Class 6 felony. However, it is not a violation of this subdivision if the telecommunications company providing any telecommunications service files an application for a telecommunications gross receipts tax license and meets all lawful prerequisites for obtaining such license within three days from receipt of written notice from the secretary.

~~For purposes of this section, the term, telecommunications company, includes corporate officers having control, supervision of, or charged with the responsibility for making tax returns or payments pursuant to this chapter.~~ For purposes of this section, the term, person, includes an officer, member, member-manager, partner, general partner, or limited partner of an entity organized pursuant to Title 47 or 48 who has control or supervision of, or is charged with the responsibility for, making tax returns or payments pursuant to this chapter.

Section 2. That § 10-33A-18 be repealed.

~~10-33A-18. If a corporation subject to the gross receipts tax under this chapter fails for any reason to file the required returns or to pay the tax due, any of its officers having control, or supervision of, or charged with the responsibility for making such returns and payments are personally liable for such failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for such a liability may be assessed and collected as provided by law.~~

~~If any responsible corporate officer elects not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation shall provide the department with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section shall be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales or gross receipts tax rate. This section does not apply to elected or appointed officials of a municipality if they are bonded pursuant to §§ 9-14-6 and 9-14-6.1.~~

Section 3. That § 10-45-48.1 be amended to read as follows:

10-45-48.1. Any person who:

- (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed by this chapter is guilty of a Class 6 felony;
- (2) Fails to pay tax due under this chapter within sixty days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these records to the secretary of revenue and regulation or his agents for the purpose of examination is guilty of a Class 1 misdemeanor;
- (4) Fails to file a return required by this chapter within sixty days from the date the return is due is guilty of a Class 1 misdemeanor;

- 1       (5) Engages in business as a retailer under this chapter without obtaining a sales tax  
2       license is guilty of a Class 1 misdemeanor;
- 3       (6) Engages in business as a retailer under this chapter after his sales tax license has been  
4       revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;
- 5       (7) Willfully violates any rule of the secretary of revenue and regulation for the  
6       administration and enforcement of the provisions of this chapter is guilty of a Class  
7       1 misdemeanor;
- 8       (8) Violates either subdivision (2) or subdivision (4) two or more times in any  
9       twelve-month period is guilty of a Class 6 felony;
- 10      (9) Engages in business as a retailer under this chapter without obtaining a sales tax  
11      license after having been notified in writing by the secretary of revenue and  
12      regulation that the person is a retailer subject to the provisions of the sales and use  
13      tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision if the  
14      person engaging in business as a retailer files an application for a sales tax license  
15      and meets all lawful prerequisites for obtaining such license within three days from  
16      receipt of written notice from the secretary.

17      ~~For purposes of this section, the term, person, includes corporate officers having control,~~  
18      ~~supervision of or charged with the responsibility for making tax returns or payments pursuant~~  
19      ~~to § 10-45-55. For purposes of this section, the term, person, includes an officer, member,~~  
20      ~~member-manager, partner, general partner, or limited partner of an entity organized pursuant~~  
21      ~~to Title 47 or 48 who has control or supervision of, or is charged with the responsibility for,~~  
22      ~~making tax returns or payments pursuant to this chapter.~~

23      Section 4. That § 10-45-55 be repealed.

24      ~~10-45-55. If a corporation subject to tax under this chapter fails for any reason to file the~~

1 ~~required returns or to pay the tax due, any of its officers having control, or supervision of, or~~  
2 ~~charged with the responsibility for making such returns and payments shall be personally liable~~  
3 ~~for such failure. The dissolution of a corporation shall not discharge an officer's liability for a~~  
4 ~~prior failure of the corporation to make a return or remit the tax due. The sum due for such a~~  
5 ~~liability may be assessed and collected as provided by law.~~

6 ~~— If the corporate officers elect not to be personally liable for the failure to file the required~~  
7 ~~returns or to pay the tax due, the corporation shall provide the Department of Revenue and~~  
8 ~~Regulation with a surety bond or certificate of deposit as security for payment of any tax that~~  
9 ~~may become due. The bond or certificate of deposit provided for in this section shall be in an~~  
10 ~~amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise~~  
11 ~~tax rate. This section does not apply to elected or appointed officials of a municipality if they~~  
12 ~~are bonded pursuant to §§ 9-14-6 and 9-14-6.1.~~

13 Section 5. That § 10-46-47.1 be repealed.

14 ~~— 10-46-47.1. If a corporation subject to tax under this chapter fails for any reason to file the~~  
15 ~~required returns or to pay the tax due, any of its officers having control, or supervision of, or~~  
16 ~~charged with the responsibility for making such returns and payments shall be personally liable~~  
17 ~~for such failure. The dissolution of a corporation shall not discharge an officer's liability for a~~  
18 ~~prior failure of the corporation to make a return or remit the tax due. The sum due for such a~~  
19 ~~liability may be assessed and collected as provided by law.~~

20 ~~— If the corporate officers elect not to be personally liable for the failure to file the required~~  
21 ~~returns or to pay the tax due, the corporation shall provide the Department of Revenue and~~  
22 ~~Regulation with a surety bond or certificate of deposit as security for payment of any tax that~~  
23 ~~may become due. The bond or certificate of deposit provided for in this section shall be in an~~  
24 ~~amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise~~

1 ~~tax rate. This section does not apply to elected or appointed officials if they are bonded pursuant~~  
2 ~~to §§ 9-14-6 and 9-14-6.1.~~

3 Section 6. That § 10-46A-13 be repealed.

4 ~~— 10-46A-13. If a corporation subject to tax under this chapter fails for any reason to file the~~  
5 ~~required returns or to pay the tax due, any of its officers having control, or supervision of, or~~  
6 ~~charged with the responsibility for making such returns and payments shall be personally liable~~  
7 ~~for such failure. The dissolution of a corporation shall not discharge an officer's liability for a~~  
8 ~~prior failure of the corporation to make a return or remit the tax due. The sum due for such a~~  
9 ~~liability may be assessed and collected as provided by law.~~

10 ~~— If the corporate officers elect not to be personally liable for the failure to file the required~~  
11 ~~returns or to pay the tax due, the corporation shall provide the Department of Revenue and~~  
12 ~~Regulation with a surety bond or certificate of deposit as security for payment of any tax that~~  
13 ~~may become due. The bond or certificate of deposit provided for in this section shall be in an~~  
14 ~~amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise~~  
15 ~~tax rate. This section does not apply to elected or appointed officials of a municipality if they~~  
16 ~~are bonded pursuant to §§ 9-14-6 and 9-14-6.1.~~

17 Section 7. That § 10-46A-13.1 be amended to read as follows:

18 10-46A-13.1. Any person who:

- 19 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed  
20 by this chapter is guilty of a Class 6 felony;
- 21 (2) Fails to pay tax due under this chapter within sixty days from the date the tax  
22 becomes due is guilty of a Class 1 misdemeanor;
- 23 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these  
24 records to the secretary of revenue and regulation or his agents for the purpose of

1 examination is guilty of a Class 1 misdemeanor;

2 (4) Fails to file a return required by this chapter within sixty days from the date the return  
3 is due is guilty of a Class 1 misdemeanor;

4 (5) Engages in business under this chapter without obtaining a contractor's excise tax  
5 license is guilty of a Class 1 misdemeanor;

6 (6) Engages in business under this chapter after his contractor's excise tax license has  
7 been revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;

8 (7) Violates either subdivision (2) or subdivision (4) of this section two or more times  
9 in any twelve-month period is guilty of a Class 6 felony;

10 (8) Engages in business under this chapter without obtaining a contractor's excise tax  
11 license after having been notified in writing by the secretary of revenue and  
12 regulation that the person is a contractor subject to the provisions of the contractors'  
13 excise tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision  
14 if the person engaging in business files an application for a contractor's excise tax  
15 license and meets all lawful prerequisites for obtaining such license within three days  
16 from receipt of written notice from the secretary.

17 ~~For purposes of this section, the term, person, includes corporate officers having control,~~  
18 ~~supervision of or charged with the responsibility for making tax returns or payments pursuant~~  
19 ~~to § 10-46A-13. For purposes of this section, the term, person, includes an officer, member,~~  
20 ~~member-manager, partner, general partner, or limited partner of an entity organized pursuant~~  
21 ~~to Title 47 or 48 who has control or supervision of, or is charged with the responsibility for,~~  
22 ~~making tax returns or payments pursuant to this chapter.~~

23 Section 8. That § 10-46B-11 be repealed.

24 ~~10-46B-11. If a corporation subject to tax under this chapter fails for any reason to file the~~

1 ~~required returns or to pay the tax due, any of its officers having control, or supervision of, or~~  
2 ~~charged with the responsibility for making such returns and payments shall be personally liable~~  
3 ~~for such failure. The dissolution of a corporation shall not discharge an officer's liability for a~~  
4 ~~prior failure of the corporation to make a return or remit the tax due. The sum due for such a~~  
5 ~~liability may be assessed and collected as provided by law.~~

6 ~~— If the corporate officers elect not to be personally liable for the failure to file the required~~  
7 ~~returns or to pay the tax due, the corporation shall provide the Department of Revenue and~~  
8 ~~Regulation with a surety bond or certificate of deposit as security for payment of any tax that~~  
9 ~~may become due. The bond or certificate of deposit provided for in this section shall be in an~~  
10 ~~amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise~~  
11 ~~tax rate. This section does not apply to elected or appointed officials of a municipality if they~~  
12 ~~are bonded pursuant to §§ 9-14-6 and 9-14-6.1.~~

13 Section 9. That § 10-46B-11.1 be amended to read as follows:

14 10-46B-11.1. Any person who:

- 15 (1) Makes any false or fraudulent return in attempting to defeat or evade the tax imposed  
16 by this chapter is guilty of a Class 6 felony;
- 17 (2) Fails to pay tax due under this chapter within sixty days from the date the tax  
18 becomes due is guilty of a Class 1 misdemeanor;
- 19 (3) Fails to keep the records and books required by § 10-45-45 or refuses to exhibit these  
20 records to the secretary of revenue and regulation or his agents for the purpose of  
21 examination is guilty of a Class 1 misdemeanor;
- 22 (4) Fails to file a return required by this chapter within sixty days from the date the return  
23 is due is guilty of a Class 1 misdemeanor;
- 24 (5) Engages in business under this chapter without obtaining a contractor's excise tax

1 license is guilty of a Class 1 misdemeanor;

2 (6) Engages in business under this chapter after his contractor's excise tax license has  
3 been revoked by the secretary of revenue and regulation is guilty of a Class 6 felony;

4 (7) Violates either subdivision (2) or subdivision (4) two or more times in any  
5 twelve-month period is guilty of a Class 6 felony;

6 (8) Engages in business under this chapter without obtaining a contractor's excise tax  
7 license after having been notified in writing by the secretary of revenue and  
8 regulation that the person is a contractor subject to the provisions of the contractors'  
9 excise tax laws is guilty of a Class 6 felony. It is not a violation of this subdivision  
10 if the person engaging in business files an application for a contractor's excise tax  
11 license and meets all lawful prerequisites for obtaining such license within three days  
12 from receipt of written notice from the secretary.

13 ~~For purposes of this section, the term, person, includes corporate officers having control,~~  
14 ~~supervision of or charged with the responsibility for making tax returns or payments pursuant~~  
15 ~~to § 10-46B-11. For purposes of this section, the term, person, includes an officer, member,~~  
16 ~~member-manager, partner, general partner, or limited partner of an entity organized pursuant~~  
17 ~~to Title 47 or 48 who has control or supervision of, or is charged with the responsibility for,~~  
18 ~~making tax returns or payments pursuant to this chapter.~~

19 Section 10. That § 10-47B-41 be repealed.

20 ~~—10-47B-41. A corporation subject to the taxes imposed by this chapter and its corporate~~  
21 ~~officers are jointly and severally liable for the filing of reports or returns and the payment of tax,~~  
22 ~~penalty, and interest due. The dissolution of a corporation does not discharge an officer's~~  
23 ~~liability for a prior failure of the corporation to make a return or remit the tax due. An officer~~  
24 ~~subject to personal liability is not discharged from that liability upon vacating the office. An~~

~~officer may be discharged from future liability upon notifying the secretary in writing. The sum due for such a liability may be assessed and collected as provided by law.~~

Section 11. That chapter 10-59 be amended by adding thereto a NEW SECTION to read as follows:

If an entity organized pursuant to Title 47 or 48 fails for any reason to file the required returns or to pay the tax due, any person having control, or supervision of, or charged with the responsibility for making such returns and payments shall be personally liable for such failure. The dissolution of an entity organized pursuant to Title 47 or 48 does not discharge a person's liability for a prior failure of the entity to make a return or remit the tax due. The sum due for the liability may be assessed and collected as provided by law.

If a person who has control or supervision of, or is charged with the responsibility for making returns and payments of an entity organized pursuant to Title 47 or 48 elects not to be personally liable for the failure to file the required returns or to pay the tax due, the entity shall provide the department with a surety bond or certificate of deposit as security for payment of any tax that may become due. The bond or certificate of deposit provided for in this section shall be in an amount equal to the estimated annual gross receipts multiplied by the applicable sales or excise tax rate. This section does not apply to an elected or appointed official of a municipality if the official is bonded pursuant to §§ 9-14-6 and 9-14-6.1.

For purposes of this section, the term, person, includes an officer, member, member-manager, partner, general partner, or limited partner of an entity organized pursuant to Title 47 or 48 who has control or supervision of, or is charged with the responsibility for, making tax returns or payments pursuant to this chapter.

Section 12. That § 10-59-1 be amended to read as follows:

10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes

1 or fees imposed by, and to any civil or criminal investigation authorized by, chapters 10-33A,  
2 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-45D, 10-46, 10-46A, 10-46B, 10-46C, 10-47B, 10-52,  
3 10-52A, 32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and §§ 22-25-48, 49-31-51,  
4 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

716M0294

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 57** - 01/19/2006

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to revise the definition of deceptive acts and practices and  
2 to increase the statute of limitations regarding deceptive trade practices.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 37-24-6 be amended to read as follows:

5 37-24-6. It is a deceptive or unfair act or practice for any person to:

6 (1) Knowingly ~~and intentionally act,~~ use, or employ any deceptive or unfair act or  
7 practice, fraud, false pretense, false promises, or misrepresentation or to conceal,  
8 suppress, or omit any material fact in connection with the sale or advertisement of  
9 any merchandise, regardless of whether any person has in fact been mislead,  
10 deceived, or damaged thereby. Such a deceptive or unfair act or practice violates this  
11 section whether it occurs before, during, or after a transaction or advertisement;

12 (2) Advertise price reductions without ~~satisfying one of the following:~~

13 ~~———— (a) Including either including in the advertisement the specific basis for the claim~~  
14 ~~of a price reduction; or~~

15 ~~———— (b) Offering or offering the merchandise for sale at the higher price from which~~



the reduction is taken for at least seven consecutive business days during the sixty-day period prior to the advertisement.

Any person advertising consumer property or services in this state, which advertisements contain representations or statements as to any type of savings claim, including reduced price claims and price comparison value claims, shall maintain reasonable records for a period of two years from the date of sale and advertisement, which records shall disclose the factual basis for such representations or statements and from which the validity of any such claim be established. However, these reasonable record provisions do not apply to the sale of any merchandise which:

(a) Is of a class of merchandise that is routinely advertised on at least a weekly basis in newspapers, shopping tabloids, or similar publications; and

(b) Has a sales price before price reduction that is less than fifteen dollars per item;

(3) Represent a sale of merchandise at reduced rates due to the cessation of business operations and after the date of the first advertisement remain in business under the same, or substantially the same, ownership or trade name, or continue to offer for sale the same type of merchandise at the same location for more than one hundred twenty days;

(4) Give or offer a rebate, discount, or anything of value to ~~an individual~~ any person as an inducement for selling consumer property or services in consideration of the person giving the names of prospective purchasers or otherwise aiding in making a sale to another person, if the earning of the rebate, discount, or other thing of value is contingent upon the occurrence of an event subsequent to the time the ~~individual~~ person agrees to the sale;

- 1       (5) Engage in any scheme or plan for disposal or distribution of merchandise whereby  
2           a participant pays a valuable consideration for the chance to receive compensation  
3           primarily for introducing one or more additional persons into participation in the  
4           planner's scheme or for the chance to receive compensation when the person  
5           introduced by the participant introduces a new participant;
- 6       (6) Send, deliver, provide, mail, or cause to be sent, delivered, provided, or mailed any  
7           unordered consumer property or service, or any bill or invoice for unordered  
8           consumer property or service provided;
- 9       (7) Advertise a rate, price, or fee for a hotel, motel, campsite, or other lodging  
10          accommodation which is not in fact available to the public under the terms  
11          advertised. It is not a violation of this subdivision to establish contract rates which  
12          are different than public rates;
- 13      (8) Charge a rate, price, or fee for a hotel, motel, campsite, or other lodging  
14          accommodation which is different than the rate, price, or fee charged on the first  
15          night of the guest's stay unless, at the initial registration of the guest, a written  
16          notification of each price, rate, or fee to be charged during the guest's reserved  
17          continuous stay is delivered to the guest and an acknowledgment of receipt of the  
18          notice is signed by the guest and kept by the innkeeper for the same period of time  
19          as is required by § 34-18-21;
- 20      (9) Knowingly and intentionally fail to mail to a future guest a written confirmation of  
21          the date and rates of reservations made for any accommodation at a hotel, motel,  
22          campsite, or other lodging accommodation when a written request for confirmation  
23          is received from the future guest;
- 24      (10) Refuse to return or reverse the charge for a deposit upon any hotel, motel, campsite,

1 or other lodging accommodation which is canceled by the guest more than thirty days  
2 before the date of the reservation. The innkeeper may establish a policy requiring a  
3 longer time for notice of cancellation or a handling fee in the event of cancellation,  
4 which may not exceed twenty-five dollars, if the policy is in writing and is delivered  
5 or mailed to the guest at or near the making of the reservation;

6 (11) Knowingly advertise or cause to be listed through the internet or in a telephone  
7 directory a business address that misrepresents where the business is actually located  
8 or that falsely states that the business is located in the same area covered by the  
9 telephone directory. This subdivision does not apply to a telephone service provider,  
10 an internet service provider, or a publisher or distributor of a telephone directory,  
11 unless the conduct proscribed in this subdivision is on behalf of the provider,  
12 publisher, or distributor;

13 (12) Sell, market, promote, advertise, or otherwise distribute any card or other purchasing  
14 mechanism or device that is not insurance that purports to offer discounts or access  
15 to discounts from pharmacies for prescription drug purchases if:

16 (a) The card or other purchasing mechanism or device does not expressly state in  
17 bold and prominent type, prevalently placed, that discounts are not insurance;

18 (b) The discounts are not specifically authorized by a separate contract with each  
19 pharmacy listed in conjunction with the card or other purchasing mechanism  
20 or device; or

21 (c) The discount or access to discounts offered, or the range of discounts or access  
22 to the range of discounts, is misleading, deceptive, or fraudulent, regardless  
23 of the literal wording.

24 The provisions of this subdivision do not apply to a customer discount or

membership card issued by a store or buying club for use in that store or buying club; or

(13) Send or cause to be sent an unsolicited commercial electronic mail message that does not include in the subject line of such message "ADV:" as the first four characters. If the message contains information that consists of explicit sexual material that may only be viewed, purchased, rented, leased, or held in possession by an individual eighteen years of age and older, the subject line of each message shall include "ADV:ADLT" as the first eight characters. An unsolicited commercial electronic mail message does not include a message sent to a person with whom the initiator has an existing personal or business relationship or a message sent at the request or express consent of the recipient.

Each act in violation of this section is a Class 2 misdemeanor. Any subsequent conviction ~~of an act in~~ for a violation of this statute, which occurs within two years is a Class 1 misdemeanor. Any subsequent conviction ~~of an act in~~ for a violation of this statute, which occurs within two years of a conviction of a Class 1 misdemeanor pursuant to this statute, is a Class 6 felony.

Section 2. That § 37-24-33 be amended to read as follows:

37-24-33. No action under this chapter may be brought more than ~~two~~ four years after the occurrence or discovery of the conduct which is the subject of the action.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

337M0215

## HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB 69** - 02/15/2006

Introduced by: Senator Knudson and Representative Cutler

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to insurable interests  
2 and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 58-10-4 be amended to read as follows:

5 58-10-4. Insurable interest with reference to personal insurance includes only interests as  
6 follows:

7 (1) ~~For~~ Interests in individuals related closely by blood, marriage, or by law, a substantial  
8 interest engendered by love and affection;

9 (2) For other persons, a lawful and substantial economic interest in having the life,  
10 health, or bodily safety of the individual insured continue, as distinguished from an  
11 interest which would arise only by, or would be enhanced in value by, the death,  
12 disablement, or injury of the individual insured;

13 (3) A person who is a party to a contract or option for the purchase or sale of an interest  
14 in a business partnership or firm, or of shares of stock of a closed corporation or of  
15 an interest in the shares, has an insurable interest in the life of each individual party



1 to the contract and for the purpose of the contract only, in addition to any insurable  
2 interest which may otherwise exist as to the life of the individual;

3 (4) A charitable organization that meets the requirements of section 501(c)3 of the  
4 Internal Revenue Code of 1986, as amended to January 1, 1992, and owns or  
5 purchases life insurance on an insured who consents to the ownership or purchase of  
6 the insurance has an insurable interest in the life of the insured;

7 (5) A financial institution, as defined in subdivision 10-43-1(4), to whom a debt is owed  
8 has an insurable interest in the life of the insured to the extent of the debt owed by  
9 the insured, irrespective of any statute of limitation regarding the enforceability of the  
10 debt;

11 (6) The trustee of a trust established by an individual settlor has an insurable interest in  
12 the life of that individual settlor, and has the same insurable interest in the life of any  
13 other individual as does such individual settlor. However, the settlor must be the  
14 insured or have an insurable interest as required by subdivisions (1) to (5), inclusive,  
15 of this section. The trustee of a trust has the same insurable interest in the life of any  
16 other individual as does any beneficiary of the trust with respect to proceeds of  
17 insurance on the life of such individual or any portion of such proceeds that are  
18 allocable to such beneficiary's interest in such trust. If multiple beneficiaries of a trust  
19 have an insurable interest in the life of the same individual, the trustee of such trust  
20 has the same aggregate insurable interest in such individual's life as such  
21 beneficiaries with respect to proceeds of insurance on the life of such individual or  
22 any portion of such proceeds that are allocable in the aggregate to such beneficiaries'  
23 interest in the trust. A trustee of a business trust has the same insurable interest in the  
24 life of any individual as does any beneficial owner in any individual or any beneficial

1           owners in the aggregate in any individual.

2           Section 2. That chapter 58-10 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4           For purposes of subdivision 58-10-4(6), the term, trust, includes any trust, including a  
5 business trust, and the term, beneficiary, includes the interest of any beneficiary in a trust,  
6 including a beneficial owner of a business trust.

7           Section 3. That chapter 58-10 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9           For purposes of subdivision 58-10-4(6), the term, business trust, means a business trust  
10 subject to chapter 47-14A or chapter 47-14B.

11          Section 4. That chapter 58-10 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13          An insurance contract for which an insurable interest exists under subdivision 58-10-4(6),  
14 is a life insurance policy issued for delivery to a trust governed by South Dakota law.

15          Section 5. That chapter 58-10 be amended by adding thereto a NEW SECTION to read as  
16 follows:

17          The provisions of subdivision 58-10-4(6) and sections 2 to 4, inclusive, of this Act, are  
18 effective retroactively to November 2, 1889.

19          Section 6. Whereas, this Act is necessary for the immediate preservation of the public peace,  
20 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and  
21 effect from and after its passage and approval.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

596M0260

## SENATE EDUCATION COMMITTEE ENGROSSED NO. **SB 83** - 01/24/2006

Introduced by: Senators Knudson, Adelstein, Dempster, Hansen (Tom), Hanson (Gary), Kelly, Kooistra, Nesselhuf, and Olson (Ed) and Representatives Thompson, Bradford, Cutler, Elliott, Faehn, Garnos, Gassman, Glover, Hennies, McCoy, McLaughlin, Miles, Murschel, Nelson, Olson (Ryan), Roberts, Street, Tornow, and Van Norman

1 FOR AN ACT ENTITLED, An Act to increase the length of time for which nationally certified  
2 teachers may receive stipends.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-42-26 be amended to read as follows:

5 13-42-26. The Department of Education shall establish a program to reimburse public school  
6 teachers for the application and processing fee for the National Board for Professional Teaching  
7 Standards certification process. The reimbursement shall include any federal funds that may be  
8 available through a candidate subsidy program. The reimbursement shall be paid upon receipt  
9 of documentation that the teacher successfully completed all certification requirements and was  
10 awarded the credential.

11 In addition to the reimbursement provided pursuant to this section, a teacher who teaches  
12 in a public school and who has obtained certification by the National Board for Professional  
13 Teaching Standards shall receive a payment of two thousand dollars per year for five years. The



1 stipend shall be paid as follows:

2 (1) One thousand dollars from the Department of Education;

3 (2) One thousand dollars from the school district where the teacher is employed.

4 Once the first five years is complete, the school district that employs the teacher may opt to  
5 continue payments during the period of the next five years. If, during that period, the school  
6 district pays the teacher a stipend, the Department of Education shall also pay the teacher a  
7 stipend equal to the amount offered by the school district, up to a maximum of one thousand  
8 dollars. However, the department is not required to pay a teacher a stipend pursuant to this  
9 section during years six to ten unless the school district employing the teacher opts to pay a  
10 stipend.

11 The Board of Education shall adopt rules, pursuant to chapter 1-26, to establish guidelines  
12 necessary to implement the program.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

418M0191

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**SB 89** - 01/26/2006

**This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators McCracken, Gray, and Sutton (Dan) and Representatives McLaughlin, Boomgarden, Bradford, Krebs, Rounds, and Thompson

1 FOR AN ACT ENTITLED, An Act to require the Division of Insurance to study the offering  
2 of assisted living facility benefits to certain persons with long-term care insurance.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 58-17B be amended by adding thereto a NEW SECTION to read  
5 as follows:

6 The Division of Insurance shall conduct a study of long-term care insurance in this state to  
7 determine the extent to which long-term care policies have been issued which do not contain  
8 assisted living facility benefits. The study shall include information as to the cost of adding  
9 assisted living facility benefits to long-term care policies and the potential premium impact it  
10 may have on other insureds. A report shall be made to the Legislature no later than December 1,  
11 2006.



# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

717M0561

## SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB 130** - 01/31/2006

Introduced by: Senators Dempster, Abdallah, and Bogue and Representatives Rave, Hennies,  
and Rhoden

1 FOR AN ACT ENTITLED, An Act to impose the 911 monthly telephone surcharge to prepaid  
2 telephone calling services.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 34-45-1 be amended to read as follows:

5 34-45-1. Terms used in §§ 34-45-1 to 34-45-17, inclusive, mean:

6 (1) "Basic 911," any service which provides the user of a public telephone system the  
7 ability to reach a public safety answering point to report police, fire, medical, or other  
8 emergency situations by dialing 911;

9 (2) "Enhanced 911," any emergency telephone system which provides the user of a  
10 public telephone system the ability to reach a public safety answering point by dialing  
11 the digits 911, and which routes an incoming 911 call to the appropriate public safety  
12 answer point in a 911 service area and which automatically displays the name,  
13 address, and telephone number of an incoming 911 call on a video monitor at the  
14 appropriate public safety answer point;

15 (3) "Governing body," the board of county commissioners of a county or the city council



1 or other governing body of a county or municipality or the board of directors of a  
2 special district;

3 (4) "Local exchange access company," any franchised telephone company engaged in  
4 providing telecommunications services between points within a local calling area;

5 (5) "Local exchange access lines," any telephone line or cellular telephone that connects  
6 a telephone subscriber to the local switching office and has the capability of reaching  
7 local public safety service agencies;

8 (6) "911 emergency reporting system" or "911 system," any telephone system consisting  
9 of network, database, and on-premises equipment which utilizes the single three-digit  
10 number 911 for reporting police, fire, medical or other emergency situation;

11 (7) "911 emergency surcharge," any charge set by the governing body and assessed on  
12 each local exchange access line which physically terminates within the governing  
13 body's designated 911 service area. For a mobile telecommunications service, the  
14 term, 911 emergency surcharge, means any charge set by the governing body and  
15 assessed per cellular telephone identified within the governing body's designated 911  
16 service area as determined by the customer's place of primary use as defined in 4  
17 U.S.C. § 124 as in effect on July 28, 2000. Notwithstanding any other provision of  
18 this chapter and for purposes of the surcharge imposed by this chapter, the surcharge  
19 imposed upon mobile telecommunication services shall be administered in  
20 accordance with 4 U.S.C. §§ 116-126 as in effect on July 28, 2000. For prepaid  
21 wireless telephone calling services, the term, 911 emergency surcharge, means any  
22 charge set by the governing body and assessed per month of service purchased within  
23 the governing body's designated 911 service area;

24 (8) "Nonrecurring costs," any capital and start-up expenditure for telecommunications

1 equipment, software, database, initial training, and the purchase or lease of subscriber  
2 names, addresses and telephone information for the local exchange access company;

3 (8A) "Prepaid wireless telephone service," any wireless telephone service that is activated  
4 in advance by payment for a finite dollar amount of service or for a finite number of  
5 minutes that terminate either upon use by any person and delivery by the wireless  
6 provider of an agreed amount of service corresponding to the total dollar amount paid  
7 in advance or within a certain period of time following the initial purchase or  
8 activation, unless an additional payment is made;

9 (9) "Public agency," any municipality, county, public district, or public authority located  
10 in whole or in part within this state which provides or has the authority to provide fire  
11 fighting, law enforcement, ambulance, emergency medical, or other emergency  
12 services;

13 (10) "Public safety answering point," any twenty-four hour communications facility which  
14 receives all 911 service calls and reroutes the requestor or information to appropriate  
15 public or private safety agencies;

16 (11) "Recurring costs," any network access fee and other telephone charges, software,  
17 equipment, database management, maintenance, charges to maintain database of  
18 subscriber names, addresses, and telephone information from the local exchange  
19 access company. Recurring costs may include personnel expenses for a public safety  
20 answering point and any other costs directly related to the operation of the 911  
21 service;

22 (12) "Service supplier," any person or entity who provides or offers to provide 911 system  
23 equipment, installation, maintenance, or exchange access services within the 911  
24 service access area; and

1       (13) "Service user," any person who is provided local access exchange telephone service  
2           in this state.

3       Section 2. That chapter 34-45 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5       Each prepaid wireless telephone calling service provider shall remit the surcharge amount  
6 on each account for which service has been paid and not yet used to the governing body each  
7 calendar quarter pursuant to § 34-45-8. The surcharge amount shall be based on the place at  
8 which the customer paid for the wireless telephone that is being used in connection with the  
9 prepaid minutes or other units of usage. However, if that place is unknown to the provider, the  
10 surcharge amount shall be based on the location associated with the wireless telephone number.  
11 The prepaid wireless telephone calling service provider may deduct units of usage equivalent  
12 to the amount of the surcharge from the unused telecommunication service, if the provider has  
13 so notified the purchaser at or before the time of purchase.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

831M0464

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 138** - 02/08/2006

**This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Adelstein, Broderick, and Duniphan and Representatives Hennies, Howie, McLaughlin, and Van Etten

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the appointment of  
2 an agent to receive any legal process.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 15-7-6 be amended to read as follows:

5 15-7-6. The use and operation by a resident of this state or ~~his~~ the resident's agent, or by a  
6 nonresident or ~~his~~ the nonresident's agent of a motor vehicle within the State of South Dakota,  
7 shall be deemed an irrevocable appointment by ~~such~~ the resident or ~~his~~ the resident's agent when  
8 ~~he~~ the resident has been absent from this state continuously for ~~six months~~ ninety days or more  
9 following a motor vehicle accident, or by ~~such~~ the nonresident or ~~his~~ the nonresident's agent at  
10 any time, of the secretary of state of South Dakota to be his or her true and lawful attorney upon  
11 whom may be served all legal process in any action or proceeding against ~~him~~ the resident or  
12 nonresident or his or her personal representative growing out of such use and operation of a  
13 motor vehicle within this state, resulting in damages or loss to person or property, whether the  
14 damage or loss occurs on a highway or on abutting public or private property. ~~Such~~ The



1 appointment is binding upon the nonresident's personal representative. ~~Such~~ The use or  
2 operation of a motor vehicle by ~~such~~ the resident or nonresident is a signification of ~~his~~ the  
3 resident's or nonresident's agreement that any such process in any action against ~~him~~ the resident  
4 or nonresident or his or her personal representative which is so served, shall be of the same legal  
5 force and validity as if served upon ~~him~~ the resident or nonresident personally or on ~~his~~ the  
6 resident's or nonresident's personal representative.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

308M0277

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 142** - 02/15/2006

Introduced by: Senators Gant, Broderick, Dempster, Gray, Hanson (Gary), Kloucek, and McNenny and Representatives Rausch, Elliott, Garnos, Klaudt, McCoy, O'Brien, Vehle, and Weems

1 FOR AN ACT ENTITLED, An Act to direct the Office of the Attorney General to study open  
2 government issues in South Dakota.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The attorney general is hereby directed to study open government issues in South  
5 Dakota. The study shall address school district, city, county, and state government entities and  
6 their actions, and shall specifically address which matters are open to the public and which are  
7 not. The attorney general shall report findings and recommendations to the executive board of  
8 the Legislative Research Council by June 30, 2007.



# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

543M0472

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 165** - 02/03/2006

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Senators Koskan, Abdallah, Adelstein, Bartling, Bogue, Dempster, Earley, Gant, Greenfield, Hanson (Gary), Kelly, Knudson, McCracken, Moore, Napoli, Olson (Ed), Schoenbeck, and Sutton (Duane) and Representatives Dykstra, Brunner, Davis, Dennert, Frost, Garnos, Gassman, Hackl, Hanks, Hargens, Haverly, Hennies, Jensen, Jerke, Klaudt, Koistinen, Michels, Novstrup, Putnam, Rhoden, Roberts, Turbiville, Weems, and Wick

1 FOR AN ACT ENTITLED, An Act to appropriate money to the South Dakota Energy  
2 Infrastructure Authority and declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is hereby appropriated from the state general fund the sum of two hundred  
5 forty-seven thousand dollars (\$247,000), or so much thereof as may be necessary, to the  
6 Department of Tourism and State Development to be used for the operations of the South  
7 Dakota Energy Infrastructure Authority.

8 Section 2. The executive director of the South Dakota Energy Infrastructure Authority shall  
9 approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by  
10 this Act.

11 Section 3. Any amount appropriated in this Act not lawfully expended or obligated by  
12 June 30, 2007, shall revert in accordance with § 4-8-21.



1       Section 4. Whereas, this Act is necessary for the support of the state government and its  
2       existing public institutions, an emergency is hereby declared to exist, and this Act shall be in  
3       full force and effect from and after its passage and approval.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

292M0432

## SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB 166** - 01/31/2006

Introduced by: Senators Knudson and Bogue and Representatives O'Brien and Cutler

1 FOR AN ACT ENTITLED, An Act to adopt the Uniform Athlete Agents Act.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. This Act may be cited as the Uniform Athlete Agents Act.

4 Section 2. In this Act:

5 (1) "Agency contract," an agreement in which a student-athlete authorizes a person to  
6 negotiate or solicit on behalf of the student-athlete a professional-sports-services  
7 contract or an endorsement contract;

8 (2) "Athlete agent," an individual who enters into an agency contract with a student-  
9 athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an  
10 agency contract. The term includes an individual who represents to the public that the  
11 individual is an athlete agent. The term does not include a spouse, parent, sibling,  
12 grandparent, or guardian of the student-athlete or an individual acting solely on  
13 behalf of a professional sports team or professional sports organization;

14 (3) "Athletic director," an individual responsible for administering the overall athletic  
15 program of an educational institution or, if an educational institution has separately



1 administered athletic programs for male students and female students, the athletic  
2 program for males or the athletic program for females, as appropriate;

3 (4) "Contact," a communication, direct or indirect, between an athlete agent and a  
4 student-athlete, to recruit or solicit the student-athlete to enter into an agency  
5 contract;

6 (5) "Endorsement contract," an agreement under which a student-athlete is employed or  
7 receives consideration to use on behalf of the other party any value that the student-  
8 athlete may have because of publicity, reputation, following, or fame obtained  
9 because of athletic ability or performance;

10 (6) "Intercollegiate sport," a sport played at the collegiate level for which eligibility  
11 requirements for participation by a student-athlete are established by a national  
12 association for the promotion or regulation of collegiate athletics;

13 (7) "Person," an individual, corporation, business trust, estate, trust, partnership, limited  
14 liability company, association, joint venture, government; governmental subdivision,  
15 agency, or instrumentality; public corporation, or any other legal or commercial  
16 entity;

17 (8) "Professional-sports-services contract" an agreement under which an individual is  
18 employed, or agrees to render services, as a player on a professional sports team, with  
19 a professional sports organization, or as a professional athlete;

20 (9) "Record," information that is inscribed on a tangible medium or that is stored in an  
21 electronic or other medium and is retrievable in perceivable form;

22 (10) "Registration," registration as an athlete agent pursuant to this Act;

23 (11) "State," a state of the United States, the District of Columbia, Puerto Rico, the United  
24 States Virgin Islands, or any territory or insular possession subject to the jurisdiction

1 of the United States;

2 (12) "Student-athlete," an individual who engages in, is eligible to engage in, or may be  
3 eligible in the future to engage in, any intercollegiate sport. If an individual is  
4 permanently ineligible to participate in a particular intercollegiate sport, the  
5 individual is not a student-athlete for purposes of that sport.

6 Section 3. (a) By acting as an athlete agent in this state, a nonresident individual appoints  
7 the secretary of state as the individual's agent for service of process in any civil action in this  
8 state related to the individual's acting as an athlete agent in this state.

9 (b) The secretary of the Department of Revenue and Regulation may issue subpoenas for any  
10 material that is relevant to the administration of this Act.

11 Section 4. (a) Except as otherwise provided in subsection (b), an individual may not act as  
12 an athlete agent in this state without holding a certificate of registration under section 6 or 8 of  
13 this Act.

14 (b) Before being issued a certificate of registration, an individual may act as an athlete agent  
15 in this state for all purposes except signing an agency contract, if:

16 (1) A student-athlete or another person acting on behalf of the student-athlete initiates  
17 communication with the individual; and

18 (2) Within seven days after an initial act as an athlete agent, the individual submits an  
19 application for registration as an athlete agent in this state.

20 (c) An agency contract resulting from conduct in violation of this section is void and the  
21 athlete agent shall return any consideration received under the contract.

22 Section 5. (a) An applicant for registration shall submit an application for registration to the  
23 secretary of state in a form prescribed by the secretary of state. An application filed under this  
24 section is a public record. The application must be in the name of an individual and, except as

1 otherwise provided in subsection (b), signed or otherwise authenticated by the applicant under  
2 penalty of perjury and state or contain:

- 3 (1) The name of the applicant and the address of the applicant's principal place of  
4 business;
- 5 (2) The name of the applicant's business or employer, if applicable;
- 6 (3) Any business or occupation engaged in by the applicant for the five years next  
7 preceding the date of submission of the application;
- 8 (4) A description of the applicant's:
  - 9 (A) Formal training as an athlete agent;
  - 10 (B) Practical experience as an athlete agent; and
  - 11 (C) Educational background relating to the applicant's activities as an athlete  
12 agent;
- 13 (5) The names and addresses of three individuals not related to the applicant who are  
14 willing to serve as references;
- 15 (6) The name, sport, and last known team for each individual for whom the applicant  
16 acted as an athlete agent during the five years next preceding the date of submission  
17 of the application;
- 18 (7) The names and addresses of all persons who are:
  - 19 (A) With respect to the athlete agent's business if it is not a corporation, the  
20 partners, members, officers, managers, associates, or profit-sharers of the  
21 business; and
  - 22 (B) With respect to a corporation employing the athlete agent, the officers,  
23 directors, and any shareholder of the corporation having an interest of five  
24 percent or greater;

1       (8)   Whether the applicant or any person named pursuant to paragraph (7) has been  
2           convicted of a crime that, if committed in this state, would be a crime involving  
3           moral turpitude or a felony, and identify the crime;

4       (9)   Whether there has been any administrative or judicial determination that the applicant  
5           or any person named pursuant to paragraph (7) has made a false, misleading,  
6           deceptive, or fraudulent representation;

7       (10)  Any instance in which the conduct of the applicant or any person named pursuant to  
8           paragraph (7) resulted in the imposition of a sanction, suspension, or declaration of  
9           ineligibility to participate in an interscholastic or intercollegiate athletic event on a  
10          student-athlete or educational institution;

11      (11)  Any sanction, suspension, or disciplinary action taken against the applicant or any  
12          person named pursuant to paragraph (7) arising out of occupational or professional  
13          conduct; and

14      (12)  Whether there has been any denial of an application for, suspension or revocation of,  
15          or refusal to renew, the registration or licensure of the applicant or any person named  
16          pursuant to paragraph (7) as an athlete agent in any state.

17      (b) An individual who has submitted an application for, and holds a certificate of,  
18      registration or licensure as an athlete agent in another state, may submit a copy of the  
19      application and certificate in lieu of submitting an application in the form prescribed pursuant  
20      to subsection (a). The secretary of state shall accept the application and the certificate from the  
21      other state as an application for registration in this state if the application to the other state:

22      (1)   Was submitted in the other state within six months next preceding the submission of  
23           the application in this state and the applicant certifies that the information contained  
24           in the application is current;

1       (2)   Contains information substantially similar to or more comprehensive than that  
2           required in an application submitted in this state; and

3       (3)   Was signed by the applicant under penalty of perjury.

4       Section 6. (a) Except as otherwise provided in subsection (b), the secretary of the  
5   Department of Revenue and Regulation shall issue a certificate of registration to an individual  
6   who complies with section 5(a) of this Act or whose application has been accepted under section  
7   5(b) of this Act. The secretary of the Department of Revenue and Regulation shall submit a copy  
8   of each certificate of registration issued to the Office of the Secretary of State.

9       (b) The secretary of the Department of Revenue and Regulation may refuse to issue a  
10   certificate of registration if the secretary determines that the applicant has engaged in conduct  
11   that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making  
12   the determination, the secretary may consider whether the applicant has:

13       (1)   Been convicted of a crime that, if committed in this state, would be a crime  
14           involving moral turpitude or a felony;

15       (2)   Made a materially false, misleading, deceptive, or fraudulent representation in the  
16           application or as an athlete agent;

17       (3)   Engaged in conduct that would disqualify the applicant from serving in a fiduciary  
18           capacity;

19       (4)   Engaged in conduct prohibited by section 14 of this Act;

20       (5)   Had a registration or licensure as an athlete agent suspended, revoked, or denied or  
21           been refused renewal of registration or licensure as an athlete agent in any state;

22       (6)   Engaged in conduct the consequence of which was that a sanction, suspension, or  
23           declaration of ineligibility to participate in an interscholastic or intercollegiate  
24           athletic event was imposed on a student-athlete or educational institution; or

1       (7) Engaged in conduct that significantly adversely reflects on the applicant's credibility,  
2               honesty, or integrity.

3       (c) In making a determination under subsection (b), the secretary of the Department of  
4       Revenue and Regulation shall consider:

5       (1) How recently the conduct occurred;

6       (2) The nature of the conduct and the context in which it occurred; and

7       (3) Any other relevant conduct of the applicant.

8       (d) An athlete agent may apply to renew a registration by submitting an application for  
9       renewal in a form prescribed by the secretary of state. An application filed under this section is  
10       a public record. The application for renewal must be signed by the applicant under penalty of  
11       perjury and must contain current information on all matters required in an original registration.

12       (e) An individual who has submitted an application for renewal of registration or licensure  
13       in another state, in lieu of submitting an application for renewal in the form prescribed pursuant  
14       to subsection (d), may file a copy of the application for renewal and a valid certificate of  
15       registration or licensure from the other state. The secretary of state shall accept the application  
16       for renewal from the other state as an application for renewal in this state if the application to  
17       the other state:

18       (1) Was submitted in the other state within six months next preceding the filing in this  
19               state and the applicant certifies the information contained in the application for  
20               renewal is current;

21       (2) Contains information substantially similar to or more comprehensive than that  
22               required in an application for renewal submitted in this state; and

23       (3) Was signed by the applicant under penalty of perjury.

24       (f) A certificate of registration or a renewal of a registration is valid for two years.

1 Section 7. (a) The secretary of the Department of Revenue and Regulation may suspend,  
2 revoke, or refuse to renew a registration for conduct that would have justified denial of  
3 registration under section 6(b) of this Act.

4 (b) The secretary of the Department of Revenue and Regulation may deny, suspend, revoke,  
5 or refuse to renew a certificate of registration or licensure only after proper notice and an  
6 opportunity for a hearing. The secretary shall provide notice of such hearing and any action  
7 taken in response to the hearing to the Office of the Secretary of State. The Administrative  
8 Procedures Act applies to this Act.

9 Section 8. The secretary of the Department of Revenue and Regulation may issue a  
10 temporary certificate of registration while an application for registration or renewal of  
11 registration is pending.

12 Section 9. An application for registration or renewal of registration must be accompanied  
13 by a fee in the following amount:

- 14 (1) One hundred dollars for an initial application for registration;  
15 (2) Fifty dollars for an application for registration based upon a certificate of registration  
16 or licensure issued by another state;  
17 (3) Twenty-five dollars for an application for renewal of registration; or  
18 (4) Twenty-five dollars for an application for renewal of registration based upon an  
19 application for renewal of registration or licensure submitted in another state.

20 All moneys received pursuant to this section shall be deposited in the state general fund.

21 Section 10. (a) An agency contract must be in a record, signed or otherwise authenticated  
22 by the parties.

23 (b) An agency contract must state or contain:

- 24 (1) The amount and method of calculating the consideration to be paid by the student-

1 athlete for services to be provided by the athlete agent under the contract and any  
2 other consideration the athlete agent has received or will receive from any other  
3 source for entering into the contract or for providing the services;

4 (2) The name of any person not listed in the application for registration or renewal of  
5 registration who will be compensated because the student-athlete signed the agency  
6 contract;

7 (3) A description of any expenses that the student-athlete agrees to reimburse;

8 (4) A description of the services to be provided to the student-athlete;

9 (5) The duration of the contract; and

10 (6) The date of execution.

11 (c) An agency contract must contain, in close proximity to the signature of the student-  
12 athlete, a conspicuous notice in boldface type in capital letters stating:

13 **WARNING TO STUDENT-ATHLETE**

14 **IF YOU SIGN THIS CONTRACT:**

15 (1) **YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-  
16 ATHLETE IN YOUR SPORT;**

17 (2) **IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER  
18 ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE  
19 AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND**

20 (3) **YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING  
21 IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR  
22 ELIGIBILITY.**

23 (d) An agency contract that does not conform to this section is voidable by the student-  
24 athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay

1 any consideration under the contract or to return any consideration received from the athlete  
2 agent to induce the student-athlete to enter into the contract.

3 (e) The athlete agent shall give a record of the signed or otherwise authenticated agency  
4 contract to the student-athlete at the time of execution.

5 Section 11. (a) Within seventy-two hours after entering into an agency contract or before the  
6 next scheduled athletic event in which the student-athlete may participate, whichever occurs  
7 first, the athlete agent shall give notice in a record of the existence of the contract to the athletic  
8 director of the educational institution at which the student-athlete is enrolled or the athlete agent  
9 has reasonable grounds to believe the student-athlete intends to enroll.

10 (b) Within seventy-two hours after entering into an agency contract or before the next  
11 athletic event in which the student-athlete may participate, whichever occurs first, the student-  
12 athlete shall inform the athletic director of the educational institution at which the student-  
13 athlete is enrolled that he or she has entered into an agency contract.

14 Section 12. (a) A student-athlete may cancel an agency contract by giving notice of the  
15 cancellation to the athlete agent in a record within fourteen days after the contract is signed.

16 (b) A student-athlete may not waive the right to cancel an agency contract.

17 (c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay  
18 any consideration under the contract or to return any consideration received from the athlete  
19 agent to induce the student-athlete to enter into the contract.

20 Section 13. (a) An athlete agent shall retain the following records for a period of five years:

- 21 (1) The name and address of each individual represented by the athlete agent;
- 22 (2) Any agency contract entered into by the athlete agent; and
- 23 (3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a  
24 student-athlete to enter into an agency contract.

(b) Records required by subsection (a) to be retained are open to inspection by the secretary of the Department of Revenue and Regulation during normal business hours.

Section 14. (a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:

- (1) Give any materially false or misleading information or make a materially false promise or representation;
- (2) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or
- (3) Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.

(b) An athlete agent may not intentionally:

- (1) Initiate contact with a student-athlete unless registered under this Act;
- (2) Refuse or fail to retain or permit inspection of the records required to be retained by section 13 of this Act;
- (3) Fail to register when required by section 4 of this Act;
- (4) Provide materially false or misleading information in an application for registration or renewal of registration;
- (5) Predate or postdate an agency contract; or
- (6) Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

Section 15. An athlete agent who violates section 14 of this Act is guilty of a Class 6 felony.

Section 16. (a) An educational institution has a right of action against an athlete agent or a

1 former student-athlete for damages caused by a violation of this Act. In an action under this  
2 section, the court may award to the prevailing party costs and reasonable attorney's fees.

3 (b) Damages of an educational institution under subsection (a) include losses and expenses  
4 incurred because, as a result of the conduct of an athlete agent or former student-athlete, the  
5 educational institution was injured by a violation of this Act or was penalized, disqualified, or  
6 suspended from participation in athletics by a national association for the promotion and  
7 regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary  
8 action taken to mitigate sanctions likely to be imposed by such an organization.

9 (c) A right of action under this section does not accrue until the educational institution  
10 discovers or by the exercise of reasonable diligence would have discovered the violation by the  
11 athlete agent or former student-athlete.

12 (d) Any liability of the athlete agent or the former student-athlete under this section is  
13 several and not joint.

14 (e) This Act does not restrict rights, remedies, or defenses of any person under law or equity.

15 Section 17. The secretary of the Department of Revenue and Regulation may assess a civil  
16 penalty against an athlete agent not to exceed twenty-five thousand dollars for a violation of this  
17 Act. All moneys received pursuant to this section shall be deposited in the state general fund.

18 Section 18. In applying and construing this Uniform Act, consideration must be given to the  
19 need to promote uniformity of the law with respect to its subject matter among states that enact  
20 it.

21 Section 19. The provisions of this Act governing the legal effect, validity, or enforceability  
22 of electronic records or signatures, and of contracts formed or performed with the use of such  
23 records or signatures conform to the requirements of section 102 of the Electronic Signatures  
24 in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and

1   supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.  
2       Section 20. If any provision of this Act or its application to any person or circumstance is  
3   held invalid, the invalidity does not affect other provisions or applications of this Act which can  
4   be given effect without the invalid provision or application, and to this end the provisions of this  
5   Act are severable.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

823M0501

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 180** - 02/01/2006

Introduced by: Senator Gant and Representative Weems

1 FOR AN ACT ENTITLED, An Act to require consumer reporting agencies to provide security  
2 freezes for consumers who are victims of identity theft.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. For purposes of this Act, a victim of identity theft is a victim of a crime as  
5 defined in § 22-30A-3.1.

6 Section 2. For the purposes of this Act, a security freeze is a notice placed in a consumer's  
7 credit report, at the request of the consumer and subject to certain exceptions, that prohibits the  
8 consumer reporting agency from releasing the consumer's credit report, relating to the extension  
9 of credit involving that consumer's report, without the express authorization of the consumer.  
10 If a security freeze is in place, information from a consumer's credit report may not be released  
11 to a third party without prior express authorization from the consumer.

12 Section 3. Any person who is a victim of identity theft and has submitted a valid police  
13 report to a consumer reporting agency may elect to place a security freeze on that person's report  
14 by making a request in writing by certified mail to a consumer reporting agency at an address  
15 designated by the consumer reporting agency to receive such requests. This section does not



1 prevent a consumer reporting agency from advising a third party that a security freeze is in effect  
2 with respect to the consumer's credit report.

3 Section 4. A consumer reporting agency shall place a security freeze on a consumer's credit  
4 report no later than five business days after receiving a written request from the consumer.

5 Section 5. The consumer reporting agency shall send a written confirmation of the security  
6 freeze to the consumer within ten business days and shall provide the consumer with a unique  
7 personal identification number or password to be used by the consumer when providing  
8 authorization for the release of the consumer's credit report for a specific period of time.

9 Section 6. If any consumer wishes to allow the consumer's credit report to be accessed for  
10 a specific period of time while a freeze is in place, the consumer shall contact the consumer  
11 reporting agency at a point of contact designated by the agency to receive such requests, request  
12 that the freeze be temporarily lifted, and provide the following:

13 (1) Proper identification, which means that information generally deemed sufficient to  
14 identify a consumer. Only if the consumer is unable to sufficiently identify himself  
15 or herself, may a consumer reporting agency require additional information  
16 concerning the consumer's employment and personal or family history in order to  
17 verify the consumer's identity;

18 (2) The unique personal identification number or password provided by the credit  
19 reporting agency pursuant to section 5 of this Act; and

20 (3) The proper information regarding the time period for which the report is available to  
21 users of the credit report.

22 Any consumer reporting agency that receives a request to temporarily lift a freeze on a credit  
23 report pursuant to this section shall comply with the request no later than three business days  
24 after receiving the request.

1       Section 7. A consumer reporting agency may develop procedures involving the use of  
2       telephone, fax, the internet, or other electronic media to receive and process a request from a  
3       consumer to temporarily lift a freeze on that consumer's credit report in an expedited manner.

4       Section 8. A consumer reporting agency shall remove or temporarily lift a freeze placed on  
5       a consumer's credit report only in the following cases:

6       (1)    Upon a consumer's request pursuant to section 6 or 11 of this Act; or

7       (2)    When the consumer's credit report was frozen due to a material misrepresentation of  
8              fact by the consumer. When a consumer reporting agency intends to remove a freeze  
9              upon a consumer's credit report under this subdivision, the consumer reporting  
10             agency shall notify the consumer in writing prior to removing the freeze on the  
11             consumer's credit report.

12       Section 9. If a third party requests access to a consumer credit report on which a security  
13       freeze is in effect, and this request is in connection with an application for credit or any other  
14       use, and the consumer does not allow the consumer's credit report to be accessed for that  
15       specific party or period of time, the third party may treat the application as incomplete.

16       Section 10. If a consumer requests a security freeze, the consumer reporting agency shall  
17       disclose the process of placing and temporarily lifting a freeze, and the process for allowing  
18       access to information from the consumer's credit report for a specific party or period of time  
19       while the freeze is in place.

20       Section 11. A security freeze remains in place until the earlier of the date the consumer  
21       reporting agency receives a request from the consumer to remove the freeze or until seven years  
22       from the date that the security freeze was put in place pursuant to section 4 of this Act. A  
23       consumer reporting agency shall remove a security freeze within three business days of  
24       receiving a request for removal from the consumer, who provides both of the following:

(1) Proper identification, as defined in subdivision (1) of section 6 of this Act; and

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to section 5 of this Act.

Requests for removal shall be made to a point of contact designated by the agency to receive such requests.

Section 12. This Act does not apply to the use of a consumer credit report by any of the following:

(1) A person, or a subsidiary, affiliate, or agent of that person, or an assignee of a financial obligation owed by the consumer to that person or entity, or a prospective assignee of a financial obligation owed by the consumer to that person in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument for the purposes of reviewing the account or collecting the financial obligation owed for the account, contract, or negotiable instrument. The term, reviewing the account, includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under section 6 of this Act for purposes of facilitating the extension of credit or other permissible use;

(3) Any federal, state, or local entity, including a law enforcement agency or court;

(4) A private collection agency acting under a court order, warrant, or subpoena;

(5) A child support agency acting under Title IV-D of the Social Security Act (42 U.S.C. et seq.);

- 1       (6)   The Department of Social Services acting to fulfill any of its statutory  
2           responsibilities;
- 3       (7)   The Internal Revenue Service acting to investigate or collect delinquent taxes or  
4           unpaid court orders or to fulfill any of its other statutory responsibilities;
- 5       (8)   The use of credit information for the purposes of prescreening as provided for by the  
6           federal Fair Credit Reporting Act;
- 7       (9)   Any person or entity administering a credit file monitoring subscription service to  
8           which the consumer has subscribed;
- 9       (10)  Any person or entity for the purpose of providing a consumer with a copy of the  
10          consumer's credit report upon the consumer's request; and
- 11      (11)  Any person or entity for use in setting or adjusting a rate, adjusting a claim, or  
12          underwriting for insurance purposes.

13       Section 13. If a security freeze is in place, a consumer reporting agency may not change any  
14   name, date of birth, social security number, or address in a consumer credit report without  
15   sending a written confirmation of the change to the consumer within thirty days of the change  
16   being posted to the consumer's file. Written confirmation is not required for technical  
17   modifications of a consumer's official information, including name and street abbreviations,  
18   complete spellings, or transposition of numbers or letters. In the case of an address change, the  
19   written confirmation shall be sent to both the new address and to the former address.

20       Section 14. No consumer reporting agency is required to place a security freeze in a  
21   consumer credit report if the consumer reporting agency acts only as a reseller of credit  
22   information by assembling and merging information contained in the data base of another  
23   consumer reporting agency or multiple consumer reporting agencies, and does not maintain a  
24   permanent data base of credit information from which new consumer credit reports are

1 produced. However, a consumer reporting agency shall honor any security freeze placed on a  
2 consumer credit report by another consumer reporting agency.

3 Section 15. The following entities are not required to place a security freeze in a consumer  
4 credit report pursuant to this Act:

5 (1) A check services or fraud prevention services company, which issues reports on  
6 incidents of fraud or authorizations for the purpose of approving or processing  
7 negotiable instruments, electronic funds transfers, or similar methods of payments;  
8 and

9 (2) A deposit account information service company, which issues reports regarding  
10 account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative  
11 information regarding a consumer, to inquiring banks or other financial institutions  
12 for use only in reviewing a consumer request for a deposit account at the inquiring  
13 bank or financial institution.

14 Section 16. A consumer reporting agency may furnish to a governmental agency a  
15 consumer's name, address, former address, places of employment, or former places of  
16 employment even if a security freeze is in place.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

444M0384

## SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 184** - 02/01/2006

Introduced by: Senator Kooistra and Representative Gillespie

1 FOR AN ACT ENTITLED, An Act to provide for the notification of certain members of the  
2 armed forces concerning screening for exposure to depleted uranium.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Depleted uranium," uranium containing less uranium-235 than the naturally  
6 occurring distribution of uranium isotopes;

7 (2) "Eligible member," a member who served in Bosnia or Kosovo or in the Persian Gulf  
8 War, as defined in 38 USC 101, as amended to January 1, 2006, or in an area  
9 designated as a combat zone by the President of the United States during Operation  
10 Enduring Freedom or Operation Iraqi Freedom;

11 (3) "Member of the armed forces" or "member," a member of the armed forces of the  
12 United States, including the South Dakota National Guard, who is a resident of this  
13 state;

14 (4) "Veteran," a veteran as defined in § 33-17-1 who served as an eligible member.

15 Section 2. After September 30, 2006, any eligible member or veteran who returns or has



1 returned to this state after service in an area designated as a combat zone by the President of the  
2 United States and who has been assigned a risk level I or II for depleted uranium exposure by  
3 the member's or veteran's branch or service, or any other member or veteran who has reason to  
4 believe that the member or veteran was exposed to depleted uranium during such service, shall  
5 be informed upon request of the member's or veteran's right to a medical evaluation for exposure  
6 to depleted uranium to be conducted at the nearest United States Department of Veterans Affairs  
7 medical facility. The Department of Military and Veterans Affairs shall promulgate rules  
8 pursuant to chapter 1-26 to provide for the notification of members and veterans required  
9 pursuant to this Act.

10 Section 3. Before January 1, 2007, the adjutant general of the South Dakota National Guard  
11 shall submit a report to the Legislature on the scope and adequacy of training received by  
12 members of the armed forces on detecting whether their service as eligible members is likely  
13 to entail, or to have entailed, exposure to depleted uranium. The report shall include an  
14 assessment of the feasibility and cost of adding predeployment training concerning potential  
15 exposure to depleted uranium and other toxic chemical substances and the precautions  
16 recommended under combat and noncombat conditions while in a combat zone.

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

400M0677

## SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB 200** - 02/02/2006

Introduced by: The Committee on Commerce at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to authorize the risk pool board to allow additional  
2 enrollees into the risk pool under certain circumstances.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 58-17-121 be amended to read as follows:

5 58-17-121. The board has the general powers and authority enumerated by §§ 58-17-68, 58-  
6 17-70, 58-17-85, and 58-17-113 to 58-17-142, inclusive, and, in addition to the responsibilities  
7 in § 58-17-119, may:

- 8 (1) Enter into any contract as necessary or proper to carry out §§ 58-17-68, 58-17-70, 58-  
9 17-85, and 58-17-113 to 58-17-142, inclusive;
- 10 (2) Take any legal action necessary or proper for recovery of any assessments for, on  
11 behalf of, or against participating carriers;
- 12 (3) Take any legal action necessary to avoid the payment of improper claims against the  
13 risk pool or the coverage provided by or through the risk pool;
- 14 (4) Use medical review to determine that care is clinically appropriate and cost effective  
15 for the risk pool;



- 1       (5)   Establish appropriate rates, scales of rates, rate classifications, and rating  
2           adjustments, none of which may be unreasonable in relation to the coverage provided  
3           and the reasonable operational expenses of the risk pool;
- 4       (6)   Issue risk pool plans on an indemnity, network, or provision of service basis and may  
5           design, utilize, contract, or otherwise arrange for the delivery of cost effective health  
6           care services, including establishing or contracting with preferred provider  
7           organizations, health maintenance organizations, and other limited network provider  
8           arrangements in providing the coverage required by §§ 58-17-68, 58-17-70, 58-17-  
9           85, and 58-17-113 to 58-17-142, inclusive;
- 10      (7)   Create appropriate legal, actuarial, and other committees necessary to provide  
11          technical assistance in the operation of the risk pool, plan and other contract design,  
12          and any other functions within the authority of the risk pool;
- 13      (8)   Provide, by including a provision in its plans, for subrogation rights by the risk pool  
14          for situations in which the risk pool pays expenses on behalf of an individual who is  
15          injured or suffers a disease under circumstances creating a liability upon another  
16          person to pay damages to the extent of the expenses paid by the risk pool, but only  
17          to the extent the damages exceed the plan deductible and coinsurance amounts paid  
18          by the enrollee; and
- 19      (9)   Allow an applicant who is not otherwise eligible for coverage pursuant to § 58-17-85  
20          to enroll in the risk pool if all of the following are met:
  - 21           (a)   The applicant is covered by an individual health benefit plan that is no longer  
22                  being marketed in this state and has a premium rate that exceeds two hundred  
23                  percent of the applicable rate, based upon that person's rating characteristics,  
24                  charged to risk pool enrollees;

1           **(b) The risk pool's financial solvency would not be impaired by enrolling the**  
2           **applicants under this subdivision;**

3           **(c) Sufficient federal funding exists to cover expected losses for those enrolled**  
4           **pursuant to this subdivision; and**

5           **(d) The number of applicants enrolled into the risk pool pursuant to this**  
6           **subdivision in any given calendar year does not exceed three percent of the**  
7           **total number of covered persons in individual health benefit plans that are no**  
8           **longer being marketed in this state.**

9           Nothing in §§ 58-17-68, 58-17-70, 58-17-85, and 58-17-113 to 58-17-142, inclusive,  
10       constitutes a waiver of immunity.